



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Herman Miller, Inc.

File: B-241582; B-241582.2

Date: February 19, 1991

Joel R. Feidelman, Esq., Fried, Frank, Harris, Shriver & Jacobson, for the protester.
Millard F. Pippin, Department of the Air Force, for the agency.
Behn Miller and Christine S. Melody, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protest challenging proposed cancellation of request for quotations (RFQ) for systems furniture issued under requote procedures set out in the Federal Supply Schedule (FSS) on the grounds that RFQ is ambiguous with regard to inclusion of a panel-sharing discount and that RFQ does not call for component pricing necessary to calculate panel-sharing discount is sustained where (1) the only reasonable interpretation of the RFQ is that, consistent with the terms of the FSS, panel-sharing is not to be factored into vendors' price calculations; and (2) component pricing is an expected part of contract administration under the FSS requote procedures, and, in any event, vendor who is line for award under the RFQ submitted the detailed component pricing which the agency seeks.

DECISION

Herman Miller, Inc. protests the proposed cancellation of request for quotations (RFQ) No. F09650-90-Q-4741, issued by the Department of the Air Force for systems furniture. Herman Miller contends that the Air Force lacks a reasonable basis for canceling the current RFQ and resoliciting.

We sustain the protest.

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BACKGROUND

The Air Force issued the RFQ on June 20, 1990, with a scheduled closing date of July 20, requesting quotes for systems furniture to outfit Building 300 at Robins Air Force Base, in accordance with the procedures established under the General Services Administration (GSA) Federal Supply Schedule (FSS) 71, Part II, Section E. The RFQ, issued to all 26 contractors on the schedule, sought quotations for a base and three option quantities of systems furniture consisting of 435 prototypical workstations. Offerors were instructed that an order would be placed with the vendor quoting the lowest total weighted price.

On July 10, by amendment No. 0001, the Air Force corrected several technical specifications and typographical errors and extended the RFQ's scheduled closing date to July 24. Shortly thereafter, one of the offerors protested that the RFQ's Furniture Noise Reduction Coefficient (NRC) standard was incorrect; in response to this protest, by amendment No. 0002 dated July 16, the Air Force postponed the RFQ's closing date indefinitely.^{1/}

By separate letters, several offerors including the protester requested clarification of some of the RFQ's specifications; by amendment No. 0003, dated July 26, the Air Force clarified and amended several of the RFQ's specifications in response to these requests. By the same amendment, the Air Force also rescheduled the RFQ's closing date for August 7.

Four offers were received; one offer was eliminated because the Air Force determined that it was outside the competitive range. The Air Force was then notified by GSA that its NRC standard was unduly restrictive; by letter dated September 17, the Air Force amended the standard in accordance with GSA's specifications. After conducting discussions with the three qualifying offerors, on September 21, the Air Force requested best and final offers (BAFO); after evaluating the BAFOs on September 25, the Air Force issued an order to the low offeror--Haworth, Inc.--on September 29.

By letter dated October 8, Herman Miller protested to our Office that the Air Force had improperly awarded the order to Haworth, alleging that Haworth had made several pricing errors in its quotation. After receiving the protest, the Air Force determined that Haworth had failed to include pricing for several furniture components on two of the prototypical

^{1/} The furniture NRC standard sets forth the amount of noise that a prototypical workstation must absorb.

workstations. Accordingly, the Air Force terminated its contract.

On October 18, the Air Force contacted Herman Miller by telephone and informed the company that the Air Force had terminated its contract with Haworth. Although Herman Miller was the next lowest offeror under the RFQ, the Air Force stated that because a new fiscal year had begun on October 1, the Air Force was required to conduct a resolicitation in order to acquire funding for the furniture requirement. By letter dated October 19, Herman Miller objected, arguing that the Air Force's funding argument was erroneous. Since that time, the Air Force has conceded that the issue of funding is no longer a basis for canceling the instant RFQ and seeking resolicitation.^{2/}

On October 24, the Air Force again contacted Herman Miller by telephone and informed the company that it had a second reason for canceling the current RFQ and pursuing resolicitation; according to the Air Force, the RFQ is ambiguous with regard to whether offerors are to propose based on a "panel-sharing" discount. By letter dated November 7, Herman Miller filed another protest with our Office claiming that the Air Force's position regarding the panel-sharing ambiguity is erroneous. In its report dated November 21 responding to the protest, the Air Force offered another ground for cancellation; specifically, the Air Force argued that resolicitation is necessary because the RFQ in its present form cannot be administered without an "impossible" effort given that the RFQ did not call for itemized quotes detailing every component needed to install each workstation with its corresponding unit price.

The RFQ was issued pursuant to the requote procedures set out in the FSS, under which vendors included on the FSS are given an opportunity to offer discounts on their furniture listed on the FSS when the quantity to be purchased exceeds the basic

^{2/} The Air Force's position is consistent with our recent decision, B-238548, Feb. 5, 1991, holding that where a contract award is terminated for convenience by the procuring activity because it was improper, funds remain available in a subsequent fiscal year to fund a replacement contract, subject to the following conditions: (1) the original award was made in good faith; (2) the agency has a continuing bona fide need for the goods or services involved; (3) the replacement contract is of the same size and scope as the original contract; and (4) the replacement contract is executed without undue delay after the original contract is terminated for convenience.

order level in the FSS. The offers are evaluated by applying a predetermined technical rating--based on GSA's assessment of the features of the offerors' products--to the offered prices to arrive at a weighted price. The agency then is to select the offeror with the lowest weighted price. While the requote procedures are conducted using an RFQ, the procedure followed is in the nature of a negotiated procurement. Thus, the FSS schedule itself states as follows:

"Requests for Requote are negotiated procurements and offerors should be given a chance to correct deficiencies in their Best and Final."

Consistent with this language, the record here shows that discussions were held with all vendors found to be in the competitive range; additionally, offerors were given an opportunity to revise their quotations and submit BAFOs by a common cutoff date. Given the similarity to negotiated procedures typically followed when a request for proposals (RFP) has been issued, we apply the standard for cancellation of an RFP, namely, that the contracting agency must have a reasonable basis for canceling an RFQ issued pursuant to the requote procedures under an FSS. See Rodgers-Cauthen, Barton-Cureton, Inc., B-220329, Jan. 6, 1986, 86-1 CPD ¶ 11.

THE PANEL-SHARING DISCOUNT

The Air Force maintains that the RFQ must be canceled because it contains an ambiguity that may have led offerors to conclude that they were permitted to prepare quotations based on a furniture system of shared panels. According to the Air Force, evidence of this ambiguity is found in Haworth's quotation; apparently, after reviewing Haworth's pricing in response to Herman Miller's October 8 protest, the Air Force discovered that Haworth had mistakenly factored a panel-sharing discount into its price quotation.^{3/}

A solicitation is not ambiguous unless it is susceptible to two or more reasonable interpretations. Ebasco Constructors Inc., B-231967, Nov. 16, 1988, 88-2 CPD ¶ 480. To be reasonable, an interpretation must be consistent with the solicitation read as a whole and in a manner that gives effect to all its provisions, including the terms set forth in the FSS. Dictaphone Corp., 69 Comp. Gen. 438 (1990), 90-1 CPD ¶ 488. Based on our review, we find that the only reasonable

^{3/} Panel-sharing occurs when at least one prototypical workstation shares a common panel with an adjoining workstation; in this situation, because one panel will serve as two, the cost of the extra panel can be deducted from the vendor's quoted price, resulting in a "panel-sharing" discount.

interpretation regarding the panel-sharing requirement is that the discount is not to be considered or factored in until after award to the lowest offeror.

The cover page of the RFQ clearly advises all offerors that "[t]his [RFQ] is issued pursuant to the procedures established under GSA [FSS] 71, Part II, Section E." With regard to calculating prices, the FSS provides as follows:

"The basis for obtaining pricing under the RFQ must be generic or non-brand specific workstation prototypicals that will be typical of the actual workstations purchased. Having vendors price out generic stations puts each vendor on an equal basis for evaluation purposes."

Under the FSS, the selected vendor presents an actual design and layout based on the physical properties of the site after award. Then, a delivery order is issued based on a bill-of-materials developed from the design. In accordance with this scheme, a panel-sharing discount could only be factored in after award, when the selected vendor submits a bill-of-materials generated from the final design illustrating the exact arrangement of the workstations in the intended floorspace. Confirming our view that panel-sharing is not to be included in responding to the RFQ, the FSS contains a sample provision suggested for use by contracting agencies advising offerors that "[n]o panel-sharing factor shall be included in the proposal."

The Air Force suggests that the language of the schedule may not be binding; specifically, the Air Force characterizes the schedule's requirements as merely "examples which are not intended to fit every circumstance." Since the RFQ expressly states that it is issued pursuant to the procedures established in the FSS, the Air Force effectively obligated itself to comply with the terms of the FSS. The scheme under which vendors submit prices on generic stations is not an "example" in the FSS, but the basic method under which agencies are to buy furniture systems. In view of this direction to contracting agencies using the systems furniture schedule to obtain pricing based on typical workstations, which could not reasonably include a panel-sharing discount, we conclude that the Air Force was required to do so here.

The RFQ is consistent with the FSS language. Under the RFQ vendors could not include a discount in their quotations. In order to determine a panel-sharing discount, the vendor would have to have a design layout indicating the arrangement of workstations in the designated floorspace; based on this actual design, a vendor could then estimate the number of common panels and accordingly determine a panel-sharing

discount. The RFQ only furnished vendors with diagrams of generic prototypical workstations; since vendors were not furnished with floorplans--necessary to determine a panel-sharing factor--we see no basis to assume that a panel-sharing discount was to be factored in before award. Moreover, whereas the RFQ contained blanks where vendors were to indicate proposed panel unit prices, it did not contain any blank or space where a vendor was to provide its proposed panel-sharing discount. In fact, the RFQ expressly classified all design layouts as "Post-Award."

Further, one of the vendors specifically raised the issue of panel-sharing, posing the following question to the contracting officer:

"For pricing purposes, do we bid on the floor plan, typicals or submit both pricing?"

In response, the Air Force included the following statement as part of amendment No. 3:

"Offerors shall offer prices based on the typicals, and not on the floor plan."

Reading the RFQ as a whole, particularly in the context of the FSS itself, we find that the only reasonable interpretation of it is that a panel-sharing discount was not to be included.

CONTRACT MODIFICATION

In its November 21 report on this protest, the Air Force argues that resolicitation is necessary because the RFQ in its current form cannot be administered without an "impossible" effort. The current RFQ required each vendor to submit price estimates for each type of workstation. The Air Force now maintains that the format of the RFQ is too broad; according to the Air Force, a new solicitation must be issued so that the contracting activity will receive itemized quotes detailing every component necessary to install each workstation with its corresponding unit price. The Air Force contends that without such information, it is unable to calculate the panel-sharing discount.

The Air Force's argument concerns contract modifications that are an expected part of the process of contract administration under the FSS requote procedures; under the terms of the schedule, after developing complete floor plans and final installation drawings, the selected vendor is required to submit a detailed bill of particulars from which the Air Force subsequently factors a panel-sharing discount. Even accepting the Air Force's need for more specific pricing data, the quotation submitted by Herman Miller in fact contains the

detailed component unit pricing which the Air Force seeks. Accordingly, we find that the Air Force's concern in this regard does not provide a reasonable basis for cancellation of the instant RFQ.

Since the Air Force has presented no reasonable basis warranting cancellation of the instant RFQ, we recommend that the Air Force issue a purchase order under the RFQ to Herman Miller. We also find that the protester is entitled to the costs of filing and pursuing its bid protest, including attorneys' fees. 4 C.F.R. § 21.6(d)(1) (1990).

The protest is sustained.

Milton J. Aocular
for Comptroller General
of the United States